

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

MAR 05 1997

In the Matter of)
)
Assessment and Collection) MD Docket 96-186
of Regulatory Fees for)
Fiscal Year 1997)

To: The Commission

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COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to 47 C.F.R. §§ 1.415 and 1.419, hereby comments upon the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking released on March 5, 1997, in the above-captioned docket ("NPRM"). PageNet is primarily concerned that the regulatory fee proposed for narrowband PCS services does not bear a reasonable or rational relationship to the messaging nature of narrowband PCS services. In support of these Comments, the following is respectfully shown:

I. Interest Of PageNet

PageNet, through its subsidiaries, is the largest paging company in the United States. PageNet is the licensee of hundreds of Common Carrier Paging ("CCP"), Private Carrier Paging ("PCP"), and narrowband Personal Communications Services ("PCS") licenses.¹ Pursuant to these licenses, PageNet offers a variety of messaging services. PageNet will be subject to substantial

¹ All of these licenses operate under the broader Commercial Mobile Radio Service ("CMRS") designation.

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regulatory fees and is interested in the above-captioned proceeding.

II. Narrowband PCS Messaging Services Should Be Subject To The Regulatory Fee For Paging Services

In the NPRM, the Commission proposed a three-cent per unit regulatory fee for paging services and a 24-cent per unit regulatory fee for the other CMRS mobile services, including narrowband PCS services. As demonstrated below, because narrowband PCS is a messaging service that does not provide customers real-time interactive mobile telephone service, narrowband PCS services should be subject to the regulatory fee for messaging service. There are compelling reasons to subject narrowband PCS messaging services to the paging regulatory fee. These reasons include:

1. PageNet's narrowband PCS messaging service is a one-way messaging service.
2. Narrowband PCS service does not offer real-time interactive mobile telephone service.
3. Messaging services, including narrowband PCS services, do not generate equivalent revenue streams to real-time interactive mobile telephone services.
4. The spectrum allocation of narrowband PCS (150 kHz maximum) is substantially dissimilar to the spectrum allocation for services real-time interactive mobile telephone services (45 MHz maximum).

A. PageNet's Narrowband PCS Service Is A One-Way Messaging Service

The service that PageNet is initially providing under its narrowband PCS authorizations is VoiceNow®. VoiceNow® is an

answering machine that may be worn on the belt. VoiceNow® is provided using an advanced network technology that utilizes base station spectrum for the delivery of the message and the mobile station spectrum to gain substantial spectrum efficiencies.² VoiceNow® is a one-way messaging service.³ Because PageNet's narrowband PCS VoiceNow® service is a messaging service, like other equivalent messaging services, VoiceNow® service should be subject to a regulatory fee of three cents or less.

B. Narrowband PCS Messaging Service Should Not Be Subject To The Same Regulatory Fee As Cellular, Broadband PCS and Covered SMR Services

In the *Assessment and Collection of Regulatory Fees for Fiscal Year 1995*, 10 FCC Rcd 13512, 13544 (1995) ("FY 1995 Fee Order"), the Commission determined to establish a separate and lower fee category for paging services. The Commission based its determination in part on the fact that paging carriers provide a messaging service whereas cellular carriers provide two-way voice

² The VoiceNow® network delivers the voice message to the mobile unit via the narrowband PCS base channel spectrum. The mobile channel spectrum is utilized to register the mobile unit to the network. Each mobile unit transmits a signal that registers the unit to the nearest network base station transmitter. Compared to traditional messaging systems that utilize simulcast technology, the utilization of the mobile channels for registration creates substantial spectrum efficiencies because only the transmitter to which a specific mobile unit is registered need transmit the message to that mobile unit.

³ In the future, narrowband PCS services may offer the ability to respond to a message. The responses would be preprogrammed in the network. The response option, when offered, would not be a real-time interactive communication.

communications.⁴ This same logic applies to narrowband PCS service. Specifically, because narrowband PCS services are messaging services that do not provide real-time interactive mobile telephone service, like traditional messaging services, narrowband PCS services should be subject to the lower regulatory fee.

C. Messaging Services, Including VoiceNow®, Do Not Generate Revenue Streams Equivalent To Real-Time Interactive Mobile Telephone Services Such As Cellular And Broadband PCS

In the *FY 1995 Fee Order*, the Commission determined to establish a separate and lower fee category for paging services.⁵ In part, this determination was based upon the fact that the paging industry is highly competitive and generally has low profit margins when compared to cellular and other public mobile services.⁶ As noted above, this logic is equally applicable to the narrowband PCS VoiceNow® service. The monthly service fee for VoiceNow® service begins at \$4.95 and will probably average about \$10 or less. The monthly service revenues for cellular and other real-time interactive telephone services average between \$60 and \$70.

Like traditional messaging services, narrowband PCS will have low profit margins because such services will compete in the highly competitive paging market and against the messaging

⁴ *FY 1995 Fee Order*, 10 FCC Rcd at 13544 (¶ 93).

⁵ *Id.*

⁶ *Id.*

services provided in the broader CMRS market. As in 1995, in determining regulatory fees, it is appropriate for the Commission to consider the revenues a particular service generates and the potential profit margins of these services. In the present matter, there is no question that the revenues and profit margins of narrowband PCS services will be akin to existing messaging profit margins -- not real-time interactive mobile telephone service profit margins. As such, it is not equitable to subject narrowband services to the same regulatory fee as services that generate revenues 6 to 7 times more than narrowband PCS services.⁷

D. The Spectrum Allocation Of Narrowband PCS Is Substantially Dissimilar To The Spectrum Allocation For Real-Time Interactive Mobile Telephone Services

In determining regulatory fees for narrowband PCS services, the Commission should take into account that there is a significant distinction between the narrowband PCS spectrum allocation and the spectrum allocation for broadband CMRS. Specifically, a single broadband license could hold as much as 10 to 30 MHz of spectrum upon which the licensees could offer provide any mobile service, including messaging. A single broadband PCS licensee could hold as much as 45 MHz of spectrum in the same area under the CMRS spectrum cap. Narrowband PCS

⁷ It should be noted that the monthly fee charged for VoiceNow® service highlights the fact that the VoiceNow® revenue stream is in line with the revenue stream of traditional messaging services and, thus, VoiceNow® should be subject to the same regulatory fee.

carriers, on the other hand, are subject to a three license cap in any geographic area, which is a maximum of 150 kHz (one fifteenth of one megahertz).⁸ This difference in amount and quality of spectrum distinguishes narrowband PCS from the broadband CMRS services for the purposes of regulatory fees.⁹

III. The Increase In Regulatory Fee For Traditional Paging Services Is Excessive

The NPRM proposes to raise the regulatory fee for traditional paging services from two cents per unit to three cents per unit. This represents a 50% increase over 1996. This percentage increase appears to be excessive and PageNet submits that the any increase in excess of 15 or 20 percent from the previous year is unwarranted and should not be adopted.

IV. PCP Licensees Should Not Be Subject To An Additional Regulatory Fee When They Have Already Paid A Five-Year Upfront Regulatory Fee

Certain PCP licensees that acquired licenses prior to September 1996 paid an up-front regulatory fee when they initially submitted their license applications. This regulatory fee was compounded for five years, which is the length of the initial term of the PCP license. These PCP licensees should, therefore, not be subject to additional regulatory fees during the term of their initial authorization.

⁸ See 47 C.F.R. § 24.101(a).

⁹ In the *FY 1995 Fee Order*, the Commission determined to apply a separate and lower fee category for paging services "in view of the quality of the channels afforded to paging entities versus cellular providers." See 10 FCC Rcd at 13544 (¶ 93).

V. The Commission Should Create A CMRS Messaging Fee

In 1996, Destineer, Inc., suggested that the Commission establish a CMRS Messaging Service Fee to replace the CMRS One-Way Paging Fee category. In the NPRM, the Commission requested comment on this proposal. PageNet supports the creation of a CMRS Messaging Service Fee that would include traditional paging and other CMRS messaging services.

Because CMRS carriers may generally provide any mobile services on their assigned spectrum, there will be many new and innovative services employed in all categories of CMRS spectrum. The Commission should consider whether regulatory fees based upon the actual service provided is more appropriate than regulatory fees based upon the category (cellular, broadband PCS, SMR). As an example, PageNet participated in the 900 MHz SMR auction and purchased over one hundred MTA licenses. Even though 900 MHz SMR spectrum is considered broadband spectrum by many, it is not PageNet's intention to offer a real-time interactive telephone service on its SMR spectrum. Rather, PageNet will deploy messaging services on this spectrum. For the reasons already stated herein, the messaging services provided on PageNet's SMR spectrum should not be subject to the same regulatory fee as real-time interactive mobile telephone services. As such, the Commission should develop regulatory fee categories and regulatory fees that are based upon the core service provided to the customer, not the FCC service category in which the spectrum was allocated.

WHEREFORE, for the foregoing reasons, the Commission should:

(1) subject narrowband PCS messaging services to the present paging/messaging regulatory fee; (2) not adopt a 50% increase in the regulatory fee for messaging services; (3) not subject PCP licensees that have already paid regulatory fees to additional fees; and (4) create regulatory fee classifications based upon core services provided, not spectrum allocation categories.

Respectfully submitted,

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